Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

CONNECT AMERICA FUND	)	WC Docket No. 10-90
	)	
A NATIONAL BROADBAND PLAN FOR OUR FUTURE	)	GN Docket No. 09-51
	)	
ESTABLISHING JUST AND REASONABLE RATES FOR LOCAL EXCHANGE CARRIERS	)	WC Docket No. 07-135
	)	
HIGH-COST UNIVERSAL SERVICE SUPPORT	)	WC Docket No. 05-337
	)	
DEVELOPING AN UNIFIED INTERCARRIER COMPENSATION REGIME	)	CC Docket No. 01-92
	)	
FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE	)	CC Docket No. 96-45
LIFELINE AND LINK-UP		WC Docket No. 03-109

REPLY COMMENTS OF FAIRPOINT COMMUNICATIONS, INC.

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REPLY COMMENTS OF FAIRPOINT COMMUNICATIONS, INC.
MAY 23, 2011
WC DOCKET 10-90 *ET ALIA*

EXECUTIVE SUMMARY

The record strongly supports a measured approach to inter-carrier compensation (ICC) and universal service funding (USF) reform, to avoid disruptions to customers and networks. The Commission therefore should plan an incremental approach, making moderate, targeted changes in the near term that are reasonably calculated to improve efficiency without harming consumers, and then reevaluating the effect of those changes on providers' incentives to invest in broadband and voice networks. The Commission should not plan to discontinue current USF support programs or conduct a reverse auction for Connect America funding (CAF) support until it evaluates the effect of its near-term reforms.

While FairPoint opposes abrupt changes in USF and ICC, some narrowly tailored reforms would be reasonable, provided they are phased in over an appropriate period of two to five years. The Commission then should reevaluate the impact of these near-term reforms on carriers' ability to invest in their networks before pursuing any radical changes, such as penetrating cuts in either USF or ICC.

The Commission should plan a single transition of USF to CAF, over the next five years, and abandon its "Phase I CAF" proposal as counterproductive. Incumbent local exchange carriers (ILECs) need certainty and time to plan their transition from a voice-centered, circuit-switched network to an IP-based broadband network over which voice is but one of a great number of applications. The Commission needs time to develop a realistic cost proxy model that will accurately predict the level of support needed to deploy broadband in high-cost areas.

The Commission also should ensure that long-needed reforms to state "carrier of last resort" (COLR) regulations accompany its new CAF scheme. For example, as support is transitioned from switched voice networks to IP-based broadband networks, COLR obligations to operate, maintain and upgrade the legacy TDM-based public switched networks must be discontinued. ILECs cannot be expected to continue operating, maintaining and upgrading two separate networks, acting as broadband "provider of last resort" (POLR) as well as COLR, especially in the absence of sufficient and predictable support for either. Instead, the FCC should set targeted, uniform and competitively neutral rules for broadband facilities deployment for any would-be CAF recipient, and only for CAF recipients, and preempt the states from imposing additional "unfunded mandates" going forward.

ICC reform deserves a reasonably lengthy transition. The Commission first should create an incentive for carriers to lower intrastate access rates to the interstate level (as a maximum) over the next five years, by providing for an access revenue recovery mechanism (ARRM) to cover 90 percent of the lost revenue during that period and for another five years. States should be given a financial incentive to permit these reductions, through assurance that ARRM, USF and CAF will flow to the carriers in their state that are permitted to reduce their intrastate access charges in this manner. At the end of five years, the Commission should evaluate the impact of these reforms and determine if additional ICC reform is needed.

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REPLY COMMENTS OF FAIRPOINT COMMUNICATIONS, INC.

FairPoint Communications, Inc., on behalf of its operating subsidiaries (FairPoint), hereby replies to the initial comments filed on or about April 18 on the Commission's recent NPRM in the above-captioned proceedings.[1]

I. Introduction: The Transition To IP-Based Networks for Most Customers Will Be Evolutionary, Not Revolutionary

1 *Connect America Fund*, WC Docket Nos. 10-90, *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (the "*NPRM*"), 76 Fed. Reg. 11632 (Mar. 2, 2011). In accordance with the comment deadlines established by the Commission, FairPoint submits these reply comments concerning the portions of the NPRM other than Section XV.

In recent years, the Commission has made enormous contributions toward the extension of state-of-the-art broadband capabilities to all Americans, and facilitating the efforts of industry, consumer groups, and local, state and federal government agencies towards accomplishing that goal. In the National Broadband Plan, the Commission analyzed the necessary elements for the transition from the public switched telephone network that was created on a "carrier of last resort" (COLR) model, to an IP-based "network of networks" that is premised on competition and innovation driven by market forces.[2] In particular, the Commission recognizes that, while many Americans enjoy alternatives to the wireline-based public switched telephone network (PSTN), including two or more broadband choices, a significant number of customers – perhaps one in thirteen – have no meaningful broadband access today.[3] This means that these customers remain reliant on the PSTN for their voice services, which are deemed essential under the Communications Act.[4] However, a substantial number of additional customers continue to rely on the PSTN for voice service even though access to broadband via one or more providers is available where they live.[5] Thus, the Commission remains obligated under the Communications Act not to strand these customers by rapid defunding of the PSTN.

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[2] FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE; CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010) (the "*NBP*"). *See also* NPRM para. 6 (describing the transition from circuit-switched networks to Internet protocol ("IP")-based networks as essential for the country's global competitiveness); NPRM para. 14 (describing one of the goals of the NPRM "to accelerate the transition to IP networks").

[3] NBP at 3, *citing* J. Horrigan, Broadband Adoption and Use in America 13 (OBI Working Paper No. 1 (2010)) ("Nearly 100 million Americans do not have broadband today. Fourteen million Americans do not have access to broadband infrastructure that can support today's and tomorrow's applications."). *See also* NPRM para. 5.

[4] 47 U.S.C. §§ 151, 214, 254(b)(3), 254 (b)(5).

[5] *See supra* note 3. The Commission acknowledges that a significant number of households with access to broadband do not subscribe. NBP at 3. The reasons vary, from price, to lack of education, to disinterest or lack of demand, and even to cultural bias. But a great number of these households continue to rely on the PSTN and thus would have no access to voice service without it. *See also* Comments of Frontier in WC Docket 10-90 *et al.*, 18 (filed Apr. 18, 2011) ("*Frontier Comments*").

FairPoint understands that the Commission faces tremendous challenges in devising a set of rules to guide the industry and consumers through the massive transition from the PSTN to an IP-based environment. The Commission rightly is attempting to consider simultaneously all of the elements that are implicated by this shift – high-cost universal service funding (USF), the USF contribution mechanism, pricing policies for regulated telecommunications services, and inter-carrier compensation (ICC) policies. The Commission appears to recognize that existing services on the PSTN must be maintained by COLRs even while new broadband facilities are being extended and new competitors are offering an increasing array of advanced services. To ensure that the Commission's rule changes serve the public interest, and do not undermine incentives to invest in existing or new networks, the Commission must move cautiously.

FairPoint agrees with the many commenters who advocate an incremental approach to both ICC reform and the CAF.[6] Rapid defunding of USF could not only leave voice customers stranded but also bring about an abrupt halt to investment in broadband networks.[7] Locations that could not be provided with the same high-quality PSTN as other locations *but for* USF support to the incumbent local exchange carrier (ILEC) will cease to attract investment without that support, to say nothing of the locations that have not yet been penetrated by broadband due to insufficient support.[8] Any Commission rule changes should allow for a sufficient transition, sufficient replacement revenues, and operator flexibility, to assure investors that there is a viable financial case for extending broadband and maintaining and upgrading networks over a reasonable period. Otherwise, carriers will be on the horns of a dilemma: maintain a viable business by abandoning high-cost areas, or continue to serve all customers and put their viability

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6 *E.g.,* Comments of CenturyLink, Inc. in WC Docket 10-90 *et al.* 6-7 (filed Apr. 18, 2011) ("*CenturyLink Comments*").

7 *See infra* note 13.

8 NBP at 143.

at risk.

II. UNIVERSAL SERVICE PROGRAMS CAN BE MADE MORE EFFICIENT AND LESS BURDENSOME ON CONSUMERS THROUGH TARGETED, INCREMENTAL REFORMS

FairPoint operates as both a rate-of-return (ROR) carrier and a price cap carrier, so it has a strong foundation on which to evaluate the benefits as well as the inefficiencies of each. As FairPoint noted in its comments, some targeted reforms would likely improve efficiency in the high-cost loop support (HCLS) and interstate common line support (ICLS) programs on which ROR carriers rely, without undermining the ability of ROR carriers to continue to maintain, operate and upgrade the PSTN.[9] However, the Commission should move cautiously in recognition of the unique challenges faces by ROR carriers. They are required by law to provide universal coverage at affordable rates in many markets where there is no viable business case to offer service in the absence of federal support.

A. Reimbursement of Loop Costs Over 150% of NACPL May Be Reduced From 100% to 90% Over Five Years.

The Commission's suggestion of a modest reduction in the level of support for ROR carriers with loop costs at the high end of the spectrum[10] appears to be supported by a number of carriers. Supporters advocate that this reduction be phased in gradually, over an appropriate transition period, such as five years.[11] FairPoint estimates that reducing the amount of recovery

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[9] For example, FairPoint supports a reasonable cap on corporate operations expense, and modification of the HCLS formula such that no carrier may recover 100% of its common line costs from the interstate jurisdiction. Comments of FairPoint Communications, Inc. in WC Docket 10-90 *et al.,* 10 (filed Apr. 18, 2011) ("*FairPoint Initial Comments*").

[10] *See* NPRM para. 201-204.

[11] *See, e.g., FairPoint Initial Comments* at 10-11 (proposing modification of the HCLS formula such that no carrier may recover more than 90% of its common line costs from the interstate jurisdiction); Comments of Windstream Communications, Inc. in WC Docket 10-90 *et al.*, 35 (filed Apr. 18., 2011) ("*Windstream Comments*"); *CenturyLink Comments* at 10.

from 100% to 90% over five years could save significant amounts[12] while allowing ROR carriers the opportunity to become more efficient or seek make-whole support from their states.

Moreover, this type of reasonable transition would allow the Commission to evaluate the impact of a targeted reduction in federal USF on the affected carriers' ability to continue investing in the local network. By monitoring this gradual reduction in USF over the five-year transition period, the Commission would be able to observe how the affected carriers respond, and ensure that consumers are not harmed. In contrast, parties that favor more rapid curtailment of high-cost USF support for ROR carriers offer no realistic suggestions as to how these carriers may continue to fund network investment and provide mandatory services, let alone expand their broadband coverage.[13]

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[12] FairPoint suggests that the Commission ask the National Exchange Carrier Association (NECA) to calculate the potential savings under various scenarios under consideration in this proceeding.

[13] *E.g.,* Comments of Sprint Nextel Corporation in WC Docket 10-90 *et al.,* 33-34 (filed Apr. 18, 2011) ("*Sprint Comments*"); Comments of the Ad Hoc Telecommunications Users Committee in WC Docket 10-90 *et al.,* 18 (filed Apr. 18, 2011)("*Ad Hoc Comments*"). In contrast, those parties with direct experience serving rural high-cost areas note the importance of ongoing support just to maintain current service levels, in addition to constructing new broadband facilities. *E.g.,* Comments of CoBank in WC Docket 10-90 *et al.,* 5-6 (filed Apr. 18, 2011) (ILECs may have difficulty obtaining financing in the absence of assurance from the FCC that they will remain eligible for ongoing support); Comments of Iowa Telecom Ass'n in WC Docket 10-90 *et al.,* 9 (filed Apr. 18, 2011) (many of Iowa's rural ILECs are not earning a compensatory rate of return under today's rules); Comments of the Reg'y Comm'n of Alaska in WC Docket 10-90 *et al.,* 10 (filed Apr. 18, 2011) ("*RCA Comments*") (local rates could increase by as much as $300 per line per month if ongoing support is curtailed); Comments of Sacred Wind in WC Docket 10-90 *et al.,* 2-5 (filed Apr. 18, 2011) (high operating costs are inherent in serving extremely rural areas regardless of whether network investment occurs incrementally or on an accelerated basis; rural ILECs require ongoing support to help defray recurring operating expenses in high cost areas that cannot be covered by customer revenues); Comments of TDS Telecomm's Corp. in WC Docket 10-90 *et al.,*17-18 (filed Apr. 18, 2011) ("*TDS Comments*") (inadequate revenues inevitably will lead to a decline in investment in high-cost areas).

B. Any New Corporate Operations Expense Cap Should Be Phased In Over Two Years.

Many comments favor modest changes to limit corporate operations expense to reasonable levels.[14] The Nebraska Rural Independent Companies, for example, suggest limiting total eligible corporate operations expense under HCLS at the holding company level, rather than the study area level.[15]

If the Commission elects to use a regression formula to cap overhead expenses, as discussed in the NPRM, FairPoint suggests that the calculation should be done before separations, and applied to all unseparated, regulated costs.[16] Alternatively, FairPoint suggests that the FCC apply the HCLS corporate operations expense cap to the calculation of local switching support and ICLS. This would be simpler to administer and could be implemented more quickly.[17] FairPoint also believes that any new limits on operating expenses should not be flash cut, but should be phased in over two years. As with the reduction in HCLS for very high-cost ROR carriers, discussed above, a reasonable transition is necessary to ensure that carriers have a reasonable time to adjust, and can continue to operate, maintain and upgrade their networks for the benefit of consumers.

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14 *See* NPRM para. 197; Comments of Pine Telephone System, Inc. in WC Docket 10-90 *et al.,* 2 (filed Mar. 30, 2011); Comments of the Kansas Corp. Comm'n in WC Docket 10-90 *et al.,* 30 (filed Apr. 18 2011); Initial Comments of the Indiana Util. Reg'y Comm'n in WC Docket 10-90 *et al*., 8 (filed Apr. 18 2011).

15 Comments of the Nebraska Rural Independent Companies in WC Docket 10-90 *et al.,* 15 (filed Apr. 18, 2011).

16 *See FairPoint Initial Comments* at 12; *CenturyLink Comments* at 68.

17 *See FairPoint Initial Comments* at 11-12.

C. The Commission Should Reject Suggestions To Consider "Total Company" Revenues Rather Than Regulated Revenues In Evaluating Need for USF.

At least one commenter takes the position that USF could be curtailed the if the Commission considered the entire revenue base of the ROR carrier, not just its regulated revenues and costs, in determining whether support is justified.[18] Essentially, this is an argument for reversing the progress made over the past twenty years in eliminating implicit subsidies, by suggesting that if a company's regulated revenues don't cover its regulated costs, but it earns a reasonable rate of return on other investments, then the latter should subsidize the former. Such an approach would violate established FCC policy as well as Section 254 of the Communications Act, which requires the FCC to make support explicit.[19] Moreover, FairPoint believes that any attempt to evaluate need based on a company's revenues from unrelated business would yield highly arbitrary results, potentially penalizing the company that prudently invests and is profitable in other enterprises and rewarding a company that has losses from other enterprises, though both may serve high-cost territories with the same cost characteristics. The courts of appeals have warned the Commission against arbitrary or result-oriented policy-making concerning USF.[20]

D. The Commission Should Prescribe A Reasonable Rate-of-Return Range Of 9.25 To 11.25 Percent For Purposes of Calculating USF and CAF.

FairPoint agrees with commenters who express support for maintaining the maximum allowable rate of return at 11.25 percent.[21] ILECs have invested in ubiquitous PSTN

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[18] *Sprint Comments* at 35-36.

[19] 47 U.S.C. §254(e).

[20] *E.g., Texas Office of Pub. Util. Counsel v. FCC,* 183 F.3d 939 (5th Cir. 1999).

[21] *E.g., ITA Comments* at 10 (describing how numerous small ILECs are having difficulty earning 11.25% today).

infrastructure based on the expectation that they will have an opportunity (not a guarantee) to earn up 11.25 percent, even while they face the hard reality of ever-declining minutes and migration of their customers to competing and largely unregulated platforms such as wireless and cable.[22] FairPoint recognizes that, ultimately, no ILEC will be able to survive without an IP-based suite of advanced services and a broadband network over which those services can be delivered. However, as a transitional matter, all ILECs must maintain the PSTN as well as build out new broadband infrastructure. It is appropriate for that transition that the Commission should prescribe a target ROR range that is at least 9.25 percent but not more than 11.25 percent for purposes of calculating federal support mechanisms such as USF and CAF.

The State Members of the Joint Board suggest that a lower rate of return be used *for calculating universal service support*. FairPoint agrees, but proposes that ILECs be permitted to continue targeting 11.25 percent *in interstate ratemaking,* for their end-user and inter-carrier charges. Of course, they have no guarantee of achieving that return; indeed, if they under-earn in a given earnings period, they have no recourse, yet if they over-earn they are subject to refund liability, so over time any carrier is likely to earn less than 11.25 percent on average.[23] Still, their investors have come to understand this approach, and there is no cause to disturb it now when the long-term goal is to move these carriers off ROR regulation altogether.

Targeting USF or CAF to a lower but still reasonable level of support, such as 9.25 percent, could well serve two of the Commission's goals, both reducing the overall amount of federal support and creating an incentive for the affected carriers to adopt price cap regulation. It may be that supporting carriers that rely on federal high-cost funding only at the 9.25 percent

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22 *See id.*

23 *Virgin Island Telephone Corp. v. FCC*, 444 F.3d 666 (D.C. Cir. 2006); *ACS of Anchorage, Inc. v. FCC,* 290 F.3d 403 (D. C. Cir. 2002); *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

level will be a significant enough change that, viewed with the alternative of freezing rural high-cost loop support (HCLS) and interstate common line support (ICLS) at current per-line levels, discussed below, many carriers would voluntarily adopt incentive-based regulation. Again, as with the other near-term changes the Commission is considering, this change should incremental, phased in over two earnings periods (a total of four years). Those carriers that remain under ROR regulation will need that time to find operating efficiencies or alternative sources of revenue. The Commission may evaluate at the end of that four-year period the results of this incremental change to the targeted ROR for carriers dependent on high-cost support.

E. The Commission Can Create a Strong Incentive For ROR Carriers To Migrate to Price Cap Regulation In 2012 By Offering Them The Ability To Retain Their High-Cost Support at 2011 Levels.

As described in the Comments of the Recently Converted Price Cap Carrier, a number of midsize ILECs in recent years voluntarily moved from ROR to price cap regulation pursuant to FCC waivers that permit them to retain their ICLS support frozen on a per-line basis, and capped on a total company basis.[24] The benefits of this approach, not only for the carriers but for consumers and the Commission, include the reduction in per-minute access charge levels in the

[24] Comments of the Recently Converted Price Cap Carriers in WC Docket 10-90 *et al.,* (filed Apr. 18, 2011), citing *Virgin Islands Telephone Corporation, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, WC Docket10-*37 et al*., Order, 25 FCC Rcd 4824 (Wireline Comp. Bur. 2010); *ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc. and ACS of the Northland, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket 08-220, Order, 24 FCC Rcd 4664 (Wireline Comp. Bur. 2009); *CenturyTel, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket 08-191, Order, 24 FCC Rcd 4677 (Wireline Comp.Bur. 2009); *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, WC Docket 07-292 *et al*., Order, 23 FCC Rcd 7353 (Wireline Comp. Bur. 2008); *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket 07-171, Order, 23 FCC Rcd 5294 (2008); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket 96-45 *et al.,* Second Report & Order, 16 FCC Rcd 19613, 19617 (2001).

interstate jurisdiction, the possibility of increased pricing flexibility to respond to market demand, and the streamlining of the ratemaking process without reference to historic costs. The Commission has never cited any problems arising from these conversions, whether they were partial company or total company, and indeed granted the last such waiver petition as recently as 2010.

The Commission has enough experience with this model at this point that it could be the basis of reform in this proceeding. Specifically, FairPoint proposes that the Commission adopt a rule change that would allow any ROR carrier to convert to price cap regulation for its interstate rates by notification to the Commission no less than four months before the next annual price cap tariff filing cycle, and provide that ICLS would continue at the prior year's levels, frozen on a per-line basis and capped on a total company basis. For example, a carrier electing this option effective July 1, 2012 would be required to notify the Commission no later than March 1, 2012, and its ICLS would be frozen on a per-line basis and a total company basis at 2011 levels.

Moreover, FairPoint recommends that any carrier that exercises this option by March 1, 2012 would qualify for support calculated under the present rules, and would not have its ICLS or HCLS reduced as they otherwise might be under any rule changes the Commission may adopt in this proceeding. Carriers would be free to adopt price cap regulation in subsequent years, but their support may have been reduced as a result of this proceeding. Thus, the Commission would create a strong incentive to bring more ROR carriers under incentive regulation while allowing them some degree of predictability that they otherwise would lack.[25]

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25 As noted in FairPoint's Comments, converting to price cap regulation poses many risks for ROR carriers ("While incentive-based regulation can confer some long-term benefits, it is not without its risks and can be disruptive in the short term. Improvements in cost control must be balanced with preservation and enhancement of service quality, reliability, availability and affordability"). *FairPoint Initial Comments* at 22.

III. THE COMMISSION SHOULD SKIP PHASE I CAF

Much concern has been expressed about at the Commission's proposal to create two CAF funding mechanism, a short-term "Phase I CAF" targeting as many households as possible with a relatively small amount of support distributed on a one-time basis, and a longer-term "Phase II CAF" that would provide more support over a longer period of time, though the parameters are less well developed in the NPRM. AT&T suggests that the Commission should simply skip Phase I and begin the work of launching the Phase II (long-term) CAF. FairPoint agrees, and believes that the Commission needs five years to fully implement this new fund.

As AT&T observes, the creation of the Phase I CAF seems inconsistent with the overall goals of the NPRM, and may even prove counter-productive.[26] For one thing, providing a limited amount of support to areas that are unserved but lower cost than other unserved areas, merely to maximize the number of households reached in the short term, runs counter to the FCC goal of efficiency. Frequently, areas are unserved not only because costs are high but because demand is low. Yet demand is likely to be stimulated in some of those areas if neighboring areas receive broadband. In other words, some of those areas that are only marginally more costly may get broadband eventually without any support at all, if the Commission begins by targeting support to the highest cost areas, and if other neighboring areas are served based on demand and costs that make business sense even in the absence of a subsidy. It therefore may be wasteful to devote limited CAF dollars to areas that are not the highest cost to serve.

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[26] Comments of AT&T in WC Docket 10-90 *et al.,* 6 (filed Apr. 18, 2011) ("*AT&T Comments*").

A second reason to skip Phase I and go directly to the Phase II CAF is competition. The FCC is proposing to allot a limited amount of funding, probably determined by a cost model or a reverse auction, to areas that remain unserved when this program is inaugurated. Recipients will want to understand the competitive and cost environments into which they are committing their resources. If a preexisting CAF recipient is in the market, it would likely dampen any incentive for a long-term CAF recipient to bid on that market – practically guaranteeing that the CAF Phase I recipient would face no competition in that market.

A better approach would be to determine an appropriate amount of broadband funding for each unserved area, and target CAF to one fixed and one mobile provider per market. Initially, the ILEC should be offered the right of first refusal (ROFR) to receive the CAF support to complete the fixed broadband network buildout;[27] if the ILEC declines, then the support should be auctioned to a single broadband provider of last resort (POLR).[28] The term of the award must be long enough – at least ten years – to allow for recovery of the POLR's investment in network facilities. The total amount of support for any geographic area must be sufficient to ensure universal coverage. FairPoint recommends that support levels be determined using a model that takes into account not only forward-looking costs but also actual (historic) costs, given that each area has its own unique cost characteristics and other impediments to deploying broadband.[29]

If the FCC nevertheless proceeds to offer a limited Phase I CAF award, it should be targeted to the states with the lowest current broadband penetration levels, not the lowest build-out costs. The goal of this proceeding should be to bring all Americans access to advanced

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27 This suggestion presumes the FCC will support broadband build-out by at most one fixed services provider and one mobile services provider in any geographic area. NPRM para. 21, n. 25.

28 *AT&T Comments* at 98-99.

29 *RCA Comments* at 22 (discussing significant cost variations from state to state).

telecommunications and information capabilities, beginning with those states that have received the fewest of these benefits before now.

IV. BROADBAND POLR OBLIGATIONS PRESCRIBED BY THE FCC SHOULD BE TARGETED, NEUTRAL, AND UNIFORM ACROSS THE COUNTRY

Because of their regulatory obligations under federal and state law, ILECs have made substantial investments in infrastructure to bring rapid and efficient communications services, including broadband services, to all customers in their service territories upon request.[30] It is no surprise that other networks, that are neither eligible for USF nor subject to the obligations of an ILEC, have not enjoyed a comparable reputation for quality, reliability, ubiquity and resiliency.[31] Now is the time for the FCC to prescribe a set of basic standards for "adequate" service at "affordable" rates, so network investments are sufficient to meet the new national standards.[32]

Many commenters agree with FairPoint that any future universal service or "provider of last resort' (POLR) obligations ought to be tied to CAF support – entities that receive this money ought to provide service in accordance with standards for "adequate facilities" and "quality

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[30] In 2010, FairPoint invested $197.8 million, approximately 18.5% of its revenue, in telecommunications infrastructure. Advanced services available in 92 percent of the access lines in FairPoint's legacy rural service areas.

[31] As ITTA notes, it is the consistent, long-term investment by ILECs, supported by USF and inter-carrier compensation policies, that has enabled significant broadband deployment and high-quality service to rural communities thus far. Comments of the Independent Telephone & Telecommunications Alliance in WC Docket No. 10-90 *et al.,* 4 (filed Apr. 18, 2011) ("*ITTA Comments*") ("It is due in significant part to the Commission's universal service and intercarrier compensation policies that broadband has been deployed in rural, high-cost areas. Instituting necessary changes, updates, and improvements to the USF and intercarrier compensation mechanisms to bring broadband to unserved areas, the Commission should not inadvertently undermine the progress that has already been made in providing broadband to currently served areas.").

[32] This is another reason why the FCC should use the next five years to put the CAF into place, as discussed above: it must provide parameters for "adequacy," "affordability," and "comparability" before it may enforce the statute.

service" at "affordable rates" prescribed by the FCC under the Communications Act.[33] The FCC alone should prescribe these regulations to ensure that they are uniform nationwide, apply to all CAF recipients regardless of technology, and are narrowly targeted to ensure that universal broadband deployment is achieved.[34]

Conversely, broadband network providers should be under no such obligation in the absence of federal support.[35] Entities that do not elect to receive CAF should not be regulated in their deployment of broadband or the services provided over it. State and local jurisdictions should be precluded from imposing legacy-type COLR obligations on broadband providers; the Commission should clarify that the states and municipalities have no jurisdiction over

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33 *See* 47 U.S.C. §151 (creating the FCC for the purpose of regulating interstate and foreign communication to make available to all people of the United States "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges"); *id.* §254(b)(1) ("Quality services should be available at just, reasonable, and affordable rates"); TELECOMMUNICATIONS ACT OF 1996 §706(c)(1) (defining "advanced telecommunications capability" as enabling users "to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology"). *See also FairPoint Initial Comments* at 17; *TDS Comments* at 8.

34 *AT&T Comments* at 88-89; *ITTA Comments* at 21-22. Many parties point out that the Commission has an opportunity to eliminate many unnecessary regulations, and permitting innovation and competition to flourish, by preempting the states from prescribing rules for services provided over broadband networks. In the market-driven broadband environment, all services are "applications" and the customer uses what he or she finds valuable. *See, e.g., AT&T Comments* at 121-128 (the FCC should ensure that states cease enforcement of COLR obligations; only those broadband network operators receiving support should be subject to POLR obligations, which should be set uniformly by the FCC*);* *TDS Comments* at 10 ("In the disaggregated areas without support, the COLR would not be able to compete with other providers on a free market basis because the COLR will have lost USF support but retained uniquely burdensome regulatory obligations"). *See also CenturyLink Comments* at 20; Comments of the United States Telecom Association in WC Docket No. 10-90 et al., 6 (filed Apr. 18, 2011) ("*USTelecom Comments*"). *See also AT&T Comments* at 104-105; Comments of Alaska Communications Systems Group, Inc. in WC Docket 10-90 *et al.*, 13-14 (filed Apr. 18, 2011) ("*ACS Comments").*

35 *E.g., Sprint Comments* at 41; Comments of Verizon and Verizon Wireless in WC Docket 10-90 *et al.*, 58 (filed Apr. 18, 2011) ("*Verizon Comments*").

broadband, and such unnecessary regulation would impair the rapid and efficient build-out of a nationwide broadband network. To the extent that any state continues to impose COLR requirements to maintain a TDM-based network at the end of the transition period, it should be required to provide support for that network as necessary for the operation, maintenance and upgrade of a stand-alone voice-grade service.[36] In any event, state COLR requirements should be permissible only as to carriers providing voice telephony that elect to receive state support.

V. ICC Reform Also Should Be Incremental and Targeted

Comprehensive ICC reform should begin with unification of intrastate and interstate access charges. Many of the comments support a unified approach.[37] There is no doubt that any reductions in ICC charges ought to benefit consumers (although none of the carriers poised to receive rate reductions has vowed to pass through the savings). Remarkably, however, eliminating the jurisdictional differences between interstate and intrastate long-distance traffic, by itself, is a reform of such magnitude that it can be expected to significantly reduce inter-carrier disputes and create operating efficiencies that will actually save ILEC resources, despite the lowering (in most states) of per-minute revenue. While a number of parties favor reductions across all ICC categories in the near term, none of these parties presents a viable revenue recovery mechanism to prevent catastrophic harm to the ILECs or rate shock to their

[36] In the future, American consumers will obtain voice telecommunications services as one of many applications running over IP-based networks. NPRM para. 10.

[37] *E.g., AT&T Comments* at 37-53; *ITTA Comments* at 43; Comments of Global Crossing in WC Docket No. 10-90 *et al.,* 11-12 (filed Apr. 18, 2011); Comments of MetroPCS in WC Docket No. 10-90 *et al.,* 7, 17-20 (filed Apr. 18, 2011); Comments of Earthlink in WC Docket No. 10-90 et al., 11-13 (filed Apr. 18, 2011); Comments of Time Warner Cable, Inc. in WC Docket No. 10-90 *et al*., 7 (filed Apr. 18, 2011) ("*Time Warner Cable Comments*").

customers.[38] Sudden shifts in this area would threaten the affordability of end-user rates, and violate the Communications Act's requirement that support be "sufficient" to ensure that rates in high-cost areas are affordable and reasonably comparable to those in other areas.[39]

As with other reforms, the Commission should proceed incrementally, allowing carriers to align intrastate access charges with interstate charges in four steps over five years, and providing an access revenue replacement mechanism (ARRM) to cover up to 90 percent of the ILEC's lost revenue each of those five years. The Commission then should assess the impact of this significant reform, and whether to continue, modify or phase out the ARRM, before considering further ICC changes.[40] FairPoint supports the positions taken by a number of carriers that a portion of the ARRM could be funded through modest end-user rate increases, subject to a reasonable rate benchmark based on national average rates.[41] FairPoint recommends that this end-user rate benchmark could be higher than the current national average of about $21.50 (including the federal subscriber line charge) but should be raised incrementally – for

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38 *See Verizon Comments* at 19-21 (FCC should establish a transition fund that will sunset in three years); Comments of XO Communications, LLC in WC Docket No. 10-90 *et al.,* 47-50 (filed Apr. 19, 2011) (advocating a "deregulated SLC increase as the *exclusive means* to implement a recovery mechanism"); *Time Warner Cable Comments* at 8-11 ("the Commission should reject calls to establish an ICC revenue recovery mechanism, regardless of the regulatory method used to govern access charges.").

39 47 U.S.C. §254(b)(1), (3).

40 *See Frontier Comments* at 10-11; Comments of COMPTEL in WC Docket No. 10-90 *et al.*, 37 (filed Apr. 18, 2011); *ITTA Comments* at 42-44 (proposing "gradual glide path" in which intrastate access charges and reciprocal compensation rates for price-cap carriers would be reduced to interstate levels over three years, after which the unified rate would be reduced further to the lesser of the current rate or the carrier's next lower interstate CALLS target rate; FCC would reevaluate at the end of four years).

41 *Windstream Comments* at 47 (proposing a local rate benchmark; permitting capped annual increases to retail rates, including increases to the SLC; and creating an ARRM to ensure sufficient revenue replacement); *CenturyLink Comments* at 64 (supporting an access recovery framework that gives providers the opportunity to recover the revenues they previously collected through ICC charges while implementing reasonable local rate benchmarks.); *Frontier Comments* at 10-11 (supporting local rate benchmarks); *ITTA Comments* at 42-44.

example, in $0.75 increments, to a cap of about $25.25, over five years. The remainder of the ARRM must be funded by other reductions in USF planned by the Commission.

The Commission has concerns about its statutory authority to preempt state access charges, and many parties in this proceeding challenge that authority.[42] The Commission is well within its authority to reform LEC access charges using incentives. The Commission could make this first phase of access charge phase-down discretionary, but deny the ARRM as well as any USF and CAF otherwise targeted to service providers in that state unless the state implements the phase-down as prescribed by the Commission. Such an approach would give every state strong incentives to reform access charges and mirror interstate rates, giving them five years in which to enact any necessary changes to state law. It also would provide a partial safety net for LECs with relatively high intrastate access charges, making the reduction in revenue gradual and allowing them to adjust their practices while avoiding rate shock to their customers.

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[42] *E.g.*, Initial Comments of the Nat'l Ass'n of Reg'y Util. Comm'rs in WC Docket10-90 *et al.,* 9-12 (filed Apr. 18, 2011);; Comments of the Utah Rural Telecomm's Ass'n in WC Docket 10-90 *et al.,* 5-6 (filed Apr. 18, 2011); Comments of the Massachusetts Dept. of Telecomm's and Cable in WC Docket10-90 *et al.,* 20-21 (filed Apr. 15, 2011); Comments of the New York Pub. Svc. Comm'n in WC Docket 10-90 *et al.,* 8-13 (filed Apr. 18, 2011); *RCA Comments* at 25.

VI. CONCLUSION

The volume of comments in this proceeding underscores the difficulty of the FCC's task, including the potential for significant harm to our national infrastructure. Investors will not continue to put money into companies that are required to "do more with less." Public policy must provide sufficient economic incentives for network providers to build broadband infrastructure to unserved areas. While FairPoint supports the push for greater efficiency, a cautious approach is warranted. The transition must be gradual and allow for adjustment by investors, competitors and consumers along the way. FairPoint looks forward to working with the Commission to ensure that this transition is successful.

Respectfully submitted,

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